



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

VIA ELECTRONIC MAIL
DELIVERY RECEIPT REQUESTED

Hongyan Huang, President and Registered Agent
Extra Power Performance LLC
extrapowerperformance@gmail.com

Re: Finding of Violation
Extra Power Performance LLC
Carmel, Indiana 46032

Dear Ms. Huang:

The U.S. Environmental Protection Agency is issuing the enclosed Finding of Violation (FOV) to Extra Power Performance LLC (EPP or you) for violating Section 203(a)(3)(B) of the Clean Air Act (CAA), 42 U.S.C. § 7522(a)(3)(B). As summarized in the attached FOV, EPA has determined that you have offered to sell and/or sold parts or components that bypass, defeat, or render inoperative emission control devices or elements of design installed on or in a motor vehicle or motor vehicle engine in order to comply with CAA emission standards. In addition, EPA has determined that you have failed to provide information to EPA required by Section 208(a) of the CAA, 42 U.S.C. § 7542(a) and in violation of Section 203(a)(2)(A), 42 U.S.C. § 7522(a)(2)(A).

We are offering you an opportunity to confer with us about the violations alleged in the FOV. The conference will give you an opportunity to present information on the specific findings of violation, any efforts you have taken to comply and the steps you will take to prevent future violations. In addition, in order to make the conference more productive, we encourage you to submit to us information responsive to the FOV prior to the conference date.

Please plan for your facility's technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference.

The EPA contact in this matter is Ethan Chatfield. You may call him at (312) 886-5112 or email him at chatfield.ethan@epa.gov to request a conference. You should make the request within 10 calendar- days following receipt of this letter. We should hold any conference within 30 calendar days following receipt of this letter.

Sincerely,

**NATHAN
FRANK**

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NATHAN FRANK
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Nathan Frank

Chief, Air Enforcement and Compliance Assurance Section (IL/IN)

cc: Phil Perry, Chief
Air Compliance Branch
Office of Air Quality
Indiana Department of Environmental Management
pperry@idem.in.gov

their emission control systems, all auxiliary emission control devices and the engine parameters monitored.

5. Engine manufacturers employ many devices and elements of design to meet emission standards. “Element of design” means “any control system (i.e., computer software, electronic control system, emission control system, computer logic), and/or control system calibrations, and/or the results of systems interaction, and/or hardware items on a motor vehicle or motor vehicle engine.” *See* 40 C.F.R. §§ 86.094-2 and 86.1803-01.
6. To meet the emission standards in 40 C.F.R. Part 86 and qualify for a COC, engine manufacturers may utilize control devices or elements of design such as Exhaust Gas Recirculation (EGR), Clean Gas Induction (CGI), Diesel Oxidation Catalyst (DOC), Diesel Particulate Filter (DPF), and/or Selective Catalytic Reduction (SCR) systems.
7. Engine and vehicle manufacturers may also employ engine fueling strategies, such as retarded fuel injection timing, as a primary element of design to limit emissions of NO_x. *See* 59 Fed. Reg. 23,264 at 23,418 (May 5, 1994) (“[I]njection timing has a very significant impact on NO_x emission rates, with advanced timing settings being associated with higher NO_x”)
8. Modern motor vehicles are equipped with electronic control modules (ECMs). ECMs continuously monitor engine and other operating parameters and control emission control devices and elements of design, such as the EGR/CGI, DOC, DPF, and SCR systems and the engine fueling strategy.
9. Under Section 202(m) of the CAA, 42 U.S.C. § 7521(m), EPA promulgated regulations for motor vehicles manufactured after 2007 that require vehicles to have numerous devices or elements of design that, working together, can detect problems with the vehicle’s emission-related systems, alert drivers to these problems, and store electronically-generated malfunction information. 40 C.F.R. §§ 86.005-17, 86.007-17, 86.1806-05. These devices or elements of design are referred to as “onboard diagnostic systems” or “OBD” systems.
10. Section 203(a)(3)(A) of the CAA, 42 U.S.C. § 7522(a)(3)(A), prohibits “any person to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under [Title II of the CAA] prior to its sale and delivery to the ultimate purchaser, or for any person knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser, or for any person knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser.” This is also referred to as “tampering.”
11. Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), prohibits “any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under [Title II of the CAA], and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use.” These parts or components are also referred to as “defeat devices.”

12. The CAA does not exempt “off-road use only” or “competition only” motor vehicles or motor vehicle engines. The definitions for motor vehicle at CAA § 216(2); 42 U.S.C. § 7550(2) and 40 C.F.R. § 85.1703 make no exemption for motor vehicles or motor vehicle engines used for competition. More generally, these definitions are based on vehicle attributes (e.g., ability to travel over 25 miles per hour, lack of features that render street use unsafe) and make no exemption for vehicles based on their use.

EPA Information Collection Authority

13. Section 208(a) of the CAA, 42 U.S.C. § 7542(a), requires “every manufacturer of new motor vehicle or engine parts or components, and other persons subject to the requirements of [Title II Part A of the CAA], to establish and maintain records . . . make reports and provide information [EPA] may reasonably require to determine whether the manufacturer or other person has acted or is acting in compliance with [Title II Part A of the CAA] and regulations thereunder, or to otherwise carry out the provision of [Title II Part A of the CAA], and shall, upon request of an officer or employee duly designated by the Administrator, permit such officer or employee at reasonable times to have access to and copy such records.”
14. Section 203(a)(2)(A) of the CAA, 42 U.S.C. § 7522(a)(2)(A), prohibits any person from failing to provide to EPA information required under Section 208(a) of the CAA, 42 U.S.C. § 7542(a); *See also* 40 C.F.R. § 1068.25.
15. 18 U.S.C. 1001(a) of the Crimes and Criminal Procedures Code states that, “whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully – (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; (2) makes any materially false, fictitious, or fraudulent statement or representation; or (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism, imprisoned not more than 8 years”

Background

16. EPP is an aftermarket automotive parts distributor located in Carmel, Indiana.
17. EPP is a “person,” as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).
18. On May 25, 2021, EPA issued an Information Request (Request) to EPP pursuant to Section 208 of the CAA, 42 U.S.C. § 7542. The Request sought information related to EPP’s manufacture, purchase, offers to sell, sale and/or installation of parts, components, and products which bypass, defeat, or render inoperative any emission control component, element of design, or emissions related part or component for the period of January 1, 2018 to the date of the Request.
19. Among other things, the Request included a specific request for information including “copies of all purchase receipts/invoices, work orders, sales receipts/invoices, and any other documents involving the purchase, sale, manufacturing and/or installation of each product.”
20. EPP submitted an incomplete response to the Request on or about July 26, 2021 (Response).

21. EPP's Response included, among other things, a spreadsheet containing information related to EPP's sales of parts, components, and products which bypass, defeat, or render inoperative emission control components, elements of design, or emissions related parts or components for the period of January 1, 2018, to the date of the Request.
22. The information submitted by EPP in its Response indicated that between January 1, 2018, and May 25, 2021, EPP sold numerous parts, components, and products which bypass, defeat, or render inoperative emission control components, elements of design, or emissions related parts or components installed on motor vehicles or motor vehicle engines; and/or render inoperative elements of design (*e.g.*, emissions-related elements of the ECM) installed on or in a motor vehicle or motor vehicle engine and allow for the removal or rendering inoperative of emission control devices (*i.e.*, EGR/CGI, DOC, DPF, and/or SCR systems(s)) without illuminating a malfunction indicator lamp in the vehicle's OBD system, prompting any diagnostic trouble code in the OBD system, or causing any engine derating due to the removal or disabling of an emission control device. These parts and/or components are defeat devices.
23. The parts and/or components sold by EPP were intended for "motor vehicles" as defined by Section 216(2) of the CAA, 42 U.S.C. § 7550(2), and were designed for use on makes and models of motor vehicles for which their respective manufacturers have obtained COCs establishing compliance with CAA emissions standards.
24. EPP's Response to the Request failed to include: (1) copies of all purchase receipts/invoices, work orders, sales receipts/invoices and any other documents involving the purchase, sale, manufacturing and/or installation of each product in accordance with Request No. 3; (2) copies of any advertisements to sell, distribute, or install each product, including advertisements on websites and in other media in accordance with Request No. 4; and (3) a list of all customers, websites, and entities to which EPP sold more than a single part or component identified in Request No. 2 in accordance with Request No. 5.
25. EPP's Response to the Request also failed to include: a list of all suppliers for any part or component identified in Request No. 2 in accordance with Request No. 6.

Violations

26. Between January 1, 2018 and May 25, 2021, EPP violated Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), by selling, offering to sell, and/or installing parts or components, intended for use with, or as part of, a motor vehicle or motor vehicle engine, where a principle effect of the part or component was to bypass, defeat or render inoperative elements of design or emission controls, such as the EGR/CGI, DOC, DPF, SCR, OBD systems and/or other elements of design on motor vehicles and motor vehicle engines that were in compliance with Title II of the CAA, where EPP knew or should have known that such part or component was being offered for sale or installed for such use or put to such use.
27. As of the date of this FOV, EPP has failed to provide all of the documents and information required by EPA's Information Request, in violation of Section 203(a)(2)(A) of the CAA, 42 U.S.C. § 7522(a)(2)(A) and 40 C.F.R. § 1068.25 which prohibit any person from failing to provide to EPA information required under Section 208(a) of the CAA, 42 U.S.C. § 7542(a).

Environmental Impact of Violations

28. These violations resulted in excess emissions of PM, NO_x, hydrocarbons, and other air pollutants and contribute to increased ground level ozone concentrations. PM, especially fine particulate containing microscopic solids or liquid droplets, can get deep into the lungs and cause serious health problems, including decreased lung function; chronic bronchitis; and aggravated asthma. Additionally, current scientific evidence links short-term NO_x exposures, ranging from 30 minutes to 24 hours with adverse respiratory effects including airway inflammation in healthy people and increased respiratory symptoms in people with asthma. Exposure to ground-level ozone can also reduce lung function and inflame lung tissue; repeated exposure may permanently scar lung tissue.

Enforcement Authority

29. EPA may bring an enforcement action for these violations under its administrative authority or by referring this matter to the United States Department of Justice with a recommendation that a civil complaint be filed in federal district court. Any person who violates Section 203(a) of the CAA, 42 U.S.C. § 7522(a), is subject to an injunction under Section 204 of the CAA, 42 U.S.C. § 7523. Any person who violates Section 203(a)(3) of the CAA, 42 U.S.C. § 7522(a)(3), is subject to a civil penalty of up to \$4,876 for each violation, and any person who violates Section 203(a)(2) of the CAA, 42 U.S.C. § 7522(a)(2), is subject to a civil penalty of up to \$48,762 for each day of violation. Section 205(a) of the CAA, 42 U.S.C. § 7524(a); 40 C.F.R. § 19.4, Table 1.

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Michael

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Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division